IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

S.A.No.1715 of 1989

1. Uthirasu
2. Kannaiyan .. Appellants

-Vs-

1. Palanivelu
2. Athai
3. Avidaikutty .. Respondents

Second appeal against the judgment and decree dated 30.4.1988 made in A.S.No.107 of 1987 on the file of the Subordinate Judge, Pattukottai, reversing the judgment and decree dated 6.7.1987 made in O.S.No.92 3 of 1982 on the file of the District Munsif, Pattukottai.

!For appellant : Mr.D.Rajagopal

^For respondent-1 & 2 : Mr.T.R.Rajaraman

:JUDGMENT

The appellants are defendants 1 and 2 in O.S.No.923 of 1982 on the file of the District Munsif, Pattukottai, laid by respondents 1 and 2/plaintiffs for a declaration and injunction based on Ex.A2, viz., ryotwari patta dated 30.6.1977, as well as Ex.A3 to A17, viz., kist receipts in respect of the suit property viz., Survey No.8/5, Rettai Vayal Village, Peravurani Taluk of an extent of 1 acre 57 cents, paid by the plaintiffs and their predecessors in title.

2. The suit was resisted by the appellants/defendant based on Ex.B5, viz., settlement register dated 5.11.1982 as well as Exs.B11 to B39, viz., the kist receipts.

3. Upon the above rival contentions, the trial Court framed the following issues:
i. Whether the plaintiffs own and possess the suit property?
ii. Whether the suit property belongs to the defendants' ancestors?

Iii. Whether there was a partition between the plaintiffs-1 & 2/ respondents and defendants-1 & 2/appellants? and
iv. Whether the suit property is in the possession of the plaintiffs?

4. The trial Court rejected the kist receipts relied upon by the appellants/defendants-1 & 2 marked as Ex.B11 to B39, holding that the same are not related to the suit property. But still, based on Ex.B2 dated 25.11.1935, viz., the permission granted to the defendants' ancestors to irrigate the cauvery delta water to the suit property and based on Ex.B8 dated 31.12.1974, viz., levy notice, Ex.B9 dated 10.11.1974 and Ex.B10, which are the fertilizer distribution cards, the learned District Munsif, Pattukottai, accepted the case of the appellants/defendants-1 & 2 that they are in possession of the suit property, and therefore, rejected the case of the respondents-1 and 2/ plaintiffs, based on Ex.A2, viz., ryotwari patta dated 30.6.1977, and dismissed the suit in O.S.No.923 of 1982, by judgment and decree dated 6.7.1 987. However, on appeal in A.S.No.107 of 1987, the learned Subordinate Judge, Pattukottai, by decree and judgment dated 30.4.1988, accepted the case of respondents-1 & 2/plaintiffs, based on Ex.A2, viz., ryotwari patta dated 30.6.1977, as well as Ex.A3 to A17, kist receipts, in respect of the kist paid by respondents-1 & 2/plaintiffs and their predecessors in title, and allowed the appeal. Hence, the above second appeal.

5. Mr.D.Rajagopal, learned counsel for the appellants/defendants-1 & 2, contends that the learned Subordinate Judge, Pattukottai, ought not to have granted the decree for declartion and injunction based on Ex.A2, which is only a Ryotwari patta, as the patta is not a proof for title of respondents-1 & 2/plaintiffs, restricting his contention with regard to the only substantial question of law, whether the mere issue of ryorwari patta under Ex.A2 can establish the title of the suit land in favour of the respondents-1 & 2/plaintiffs.

6. I am unable to appreciate the above contention.

7. No doubt, the patta is not a proof of title. But still it can be relied upon to prove the ownership and possession of the party in whose name the patta has been granted, in the absence of a better documentary evidence for title and possession by any other person.

8. In the instant case, the appellants/defendants-1 & 2 have relied upon Ex.B1, viz., the survey notice dated 30.9.1935 and Ex.B2 dated 2 5.11.1935, viz., the permission granted to the defendants' ancestors to irrigate the cauvery delta water to the suit property and also based on Ex.B5, viz., the settlement register dated 5.11.1982. On the other hand, respondents-1 & 2/plaintiffs placed reliance on Ex.A2 dated 30.6.1977, viz., the Ryotwari patta as well as kist receipts marked as Exs.A3 to A17, with reference to the suit property.

9. Admittedly, Ex.B5 viz,. the settlement register dated 5.11.1982 relied upon by the appellants/defendants-1 & 2, also refer to the suit property viz., Survey No.8/5, Rettai Vayal Village, Peravurani Taluk of an extent of 1 acre 57 cents, against which, the respondents-1 & 2/plaintiffs and

their predecessors in title were shown as possessors of the same, which fact corroborates with the evidence of respondents-1 & 2/plaintiffs based on Ex.A2, dated 30.6.1977, Ryotwari patta granted in favour of the respondents-1 & 2/plaintiffs, and is also supported by Exs.A3 to A17. On the other hand, the kist receipts, marked as Ex.B11 to B39, on behalf of the appellants/defendants-1 & 2, were rejected by both the Courts below, holding that they are not related to the suit property. Hence, in the absence of any documentary evidence in favour of appellants/ defendants-1 & 2, certainly, the appellate Court is right in placing reliance on the ryotwari patta viz., Ex.A2 and kist receipts, viz., Exs.A3 to A17 for granting the declaration as prayed for.

10. I am therefore obliged to hold that in the absence of any material and better evidence on record, the ryotwari patta can be relied upon to declare the title of the petitioner with regard to the property for which the patta is issued.

Hence, the second appeal fails, and is therefore dismissed. No costs.

P.D.DINAKARAN,J.
Index: Yes
Internet: Yes 25.06.2002
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To:
1. The Subordinate Judge, Pattukottai. (with records).
2. The District Munsif, Pattukottai. (with records).
Copy to:
The Section Officer, V.R.Section, High Court, Madras.